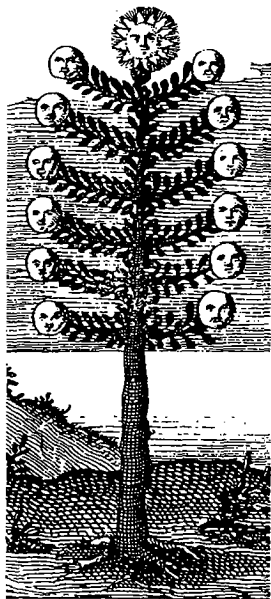


THE
CENTER FOR COGNITIVE LIBERTY & ETHICS

JOURNAL OF COGNITIVE LIBERTIES

RICHARD GLEN BOIRE, ESQ.
EXECUTIVE DIRECTOR

MONDAY, FEBRUARY 05, 2001



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U.S. Sentencing Commission
Attention Michael Courlander
One Columbus Circle, N.E. Suite 2-500
Washington, D.C. 20002-8002

RE: Emergency Guidelines Amendments Regarding MDMA (Ecstasy)

Dear Commissioners:

The Center for Cognitive Liberty & Ethics submits the following comments and recommendations to the United States Sentencing Commission with respect to the Commission's notice inviting interested persons to submit comments concerning the Commission's proposed amendments to the federal sentencing guidelines. (See, 66(18) *Federal Register* pp. 7961-8017, January, 26, 2001.)

In particular, our comments, and those we hereby submit on behalf of other members of the public, pertain to the Commission's directive to determine the appropriate equivalencies under the sentencing guidelines for "Ecstasy" offenses.

I understand that the Commission's public hearing scheduled for March 19-20 is ostensibly limited to comments concerning the non-emergency amendments, which would preclude comments concerning MDMA ("Ecstasy"). Given that only 10 days were permitted for public comment under the emergency authority, it is my hope, and request, that the Commission will allocate some time at your March public hearing for comments concerning the appropriate punishment for "Ecstasy" offenses.

If you have any questions concerning the attached materials, please do not hesitate to contact me.

Sincerely,

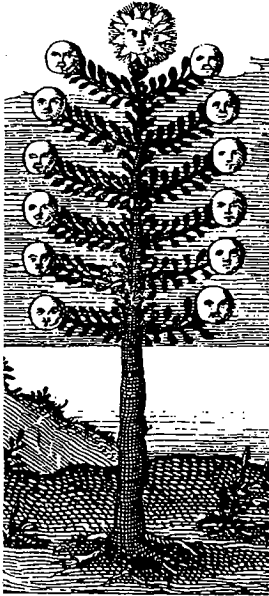
Richard Glen Boire, Esq.
Director, Center for Cognitive Liberty & Ethics

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RICHARD GLEN BOIRE, J.D.
EXECUTIVE DIRECTOR

MONDAY, FEBRUARY 05, 2001



U.S. Sentencing Commission
Attention Public Information
One Columbus Circle, N.E. Suite 2-500
Washington, D.C. 20002-8002

Comments & Recommendations from
the Center for Cognitive Liberty & Ethics,
Concerning Emergency Amendments Regarding MDMA ("Ecstasy")

Dear U.S. Sentencing Commission:

The Center for Cognitive Liberty & Ethics submits the following comments and recommendations in response to the Commission's invitation for comments concerning its proposed amendments to the federal sentencing guidelines. In particular, our comments and recommendations pertain to the proposed emergency amendments regarding MDMA, MDA, MDEA, and PMA.

1. THE COMMISSION IS NOT OBLIGATED TO INCREASE THE GUIDELINES' PUNISHMENT FOR MDMA, MDA, MDEA, OR PMA.

The United States Sentencing Commission (hereinafter "Commission") is an independent agency in the judicial branch of the government, vested with prescribing the appropriate form and severity of punishment for offenders of federal crimes. (*Mistretta v. United States* (1989) 488 U.S. 361.)

The Center for Cognitive Liberty & Ethics respectfully submits that the Commission is not obligated under section 3664 of Pub. L. 106-310, to *increase* the penalties for "Ecstasy" offenses, but is instead obligated under the Sentencing Reform Act provisions of the Comprehensive Crime Control Act of 1984, to design sentencing guidelines that: (1) incorporate the purposes of sentencing (*i.e.*, just punishment, deterrence, incapacitation, and rehabilitation); (2) provide certainty and fairness in meeting the purposes of sentencing by avoiding unwarranted disparity among offenders with similar characteristics convicted of similar criminal conduct, while permitting sufficient judicial flexibility to take into account relevant aggravating and mitigating factors; and (3) reflect, to the extent practicable, advancement in the knowledge of human behavior as it relates to the criminal justice process.

These three responsibilities, in conjunction with the fact that the Commission is an independent agency in the judicial branch, mandate that the Commission set the appropriate punishment for "Ecstasy" offenses, rather than yield to political pressure or act under an assumed (but not existent) obligation that it must increase the base offense level for "Ecstasy" offenses.

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2. The Commission should hold a public hearing on the proposed Amendments regarding "Ecstasy" in order to receive and consider evidence concerning "Ecstasy" – evidence that is necessary to consider in order for the Commission to meet its obligations to set the appropriate penalty under Sentencing Reform Act provisions of the Comprehensive Crime Control Act of 1984.

Section 3662 of Pub. L. 106-310, incorporates Congress' "findings of fact." These summary findings, however, are insufficient for the Commission to determine the appropriate penalty for Ecstasy offenses. In particular, the "findings of fact" in section 3662 fail to acknowledge the findings and recommendations of DEA Administrative Law Judge Francis Young who concluded after a comprehensive hearing on MDMA, that: (1) MDMA has a safe and accepted medical use; and (2), that there was insufficient evidence to conclude that MDMA had a high potential for abuse. Based on these findings, Judge Young ruled that MDMA should be placed in Schedule III, and thus available for doctors to prescribe and use in therapy. (See *In the Matter of MDMA Scheduling*, United States Department of Justice, Drug Enforcement Administration, Docket No. 84-48 (1985-86) [Judge Young's Opinion is available online at: <http://www.mninter.net/~publish/mdma.htm>.])

The Center for Cognitive Liberty & Ethics respectfully submits and recommends that the Commission review and consider Judge Young's opinion, and, further, that the Commission hold public hearings for the purpose of learning more about MDMA, MDA, MDEA, and PMA, before determining the appropriate guidelines penalties for offenses involving these substances.

3. There is no evidence that MDMA use is presenting a significant harm to society.

Although evidence indicates that MDMA use has significantly increased in recent years there appears to be no evidence linking MDMA to disorderly, or violent conduct. Indeed, the evidence is to the contrary. The psychoactive effects of MDMA are almost universally experienced as communitarian, "heart-opening," and empathy eliciting. (See, Beck, J. & Rosenbaum, M., *Pursuit of Ecstasy: The MDMA Experience* (State Univ. of New York Press: NY, 1994.)) Although MDMA is widely used (despite the prohibition), often in large gatherings of people, reports of violence or "anti-social" conduct by people who have ingested MDMA are virtually nonexistent.

The Center for Cognitive Liberty & Ethics respectfully submits and recommends that in light of the lack of evidence of public or social harm associated with MDMA use, it would be inappropriate for the Commission to increase the base offense level for MDMA offenses or to otherwise modify the guidelines such that harsher punishment would be imposed for MDMA offenses.

4. The proposed amendment, which would increase the base offense level for MDMA offenses, violates the moral right of adults to control their own mental processes without fear of government punishment.

Increasing the base offense level for MDMA offenses (which would result in lowering the amount of MDMA necessary for a federal prison sentence under the Guidelines), would unjustly and disproportionately punish otherwise law-abiding citizens who possess as little as 5 grams of MDMA, and/or ingest it responsibly without causing harm to others.

The Center for Cognitive Liberty & Ethics submits that increasing the criminal punishment for MDMA offenses violates the fundamental right of responsible adults to control their own consciousness. In the opinion of the Center for Cognitive Liberty & Ethics, any punishment related to MDMA should be strictly limited to punishing *conduct* that harms others, or which poses an immediate harm to others.

For example, in our opinion, using MDMA (or any other substance, including alcohol) to facilitate rape or another criminal offense should be punished under the guidelines. However, in order to respect the moral rights of adults to autonomy over their own minds and cognitive processes, the Center for Cognitive Liberty & Ethics respectfully submits that any offense that involves merely the possession, manufacture,

importation, exportation, or distribution of MDMA should not be punished—certainly the existing penalties should not be increased.

The Center for Cognitive Liberty & Ethics submits that criminal prosecution and punishment of responsible users of psychoactive plants and chemicals is an ineffectual, immoral, unsophisticated, and socially harmful drug policy. The Center respectfully submits that the U.S. Sentencing Commission, as the body charged with determining the "appropriate punishment" for many of the federal offenses involving psychoactive plants and substances, should take the lead in considering alternatives to the failed "zero-tolerance" Prohibition/Punishment model of drug control.

Respectfully submitted,



Richard Glen Boire, Esq.
Center for Cognitive Liberty & Ethics

ABOUT THE CENTER FOR COGNITIVE LIBERTY & ETHICS

The Center for Cognitive Liberty & Ethics is a nonprofit law and policy center working in the public interest to protect fundamental civil liberties. The Center seeks to foster cognitive liberty – the basic human right to unrestrained independent thinking, including the right to control one's own mental processes and to experience the full spectrum of possible thought.

**THE FOLLOWING PUBLIC COMMENTS CONCERNING THE PROPOSED SENTENCING
AMENDMENT REGARDING MDMA, MDE, MDEA, AND PMA
WERE COLLECTED BY THE CENTER FOR COGNITIVE LIBERTY & ETHICS
AND ARE HEREBY SUBMITTED FOR CONSIDERATION BY THE SENTENCING COMMISSION.**

**THE FOLLOWING COMMENTS ARE THOSE OF THE WRITERS AND DO NOT NECESSARILY
REPRESENT THE OPINIONS OF THE CENTER FOR COGNITIVE LIBERTY & ETHICS**

specmind

From: <Csgrob@aol.com>
To: <rgb@cognitiveliberty.org>; <Glbravo@aol.com>
Sent: Monday, February 05, 2001 1:08 AM
Subject: MDMA Sentencing Commission Letter

February 4, 2001

U.S. Sentencing Commission

Dear Sirs/Madams:

As two psychiatrists who have conducted clinical research and have written extensively about the effects of MDMA (3,4-methylenedioxymethamphetamine), we would like to take this opportunity to express our strong opposition to the proposed new sentencing laws for MDMA.

It has become increasingly evident that raising penalties for MDMA offenses is an unfortunate perpetuation of ineffectual drug war legislation that will ultimately be counterproductive to the government's well-intentioned mission to stem the tide of MDMA use, and will only make a bad situation worse. Most MDMA users are in fact functional citizens, often young adults in our communities, and incarcerating them for longer periods of time would not only fail to be beneficial for society, but would regrettably inflict excessive degrees of punishment and injury to individuals caught within the web of illicit drug war activity, and to their families. We predict that the proposed sentencing laws would only result in targeting low-level dealers and users and not the high volume traffickers for which the laws are intended. Inevitably, the most pronounced consequence would be to push the world's MDMA supply increasingly into the hands of highly organized, unscrupulous, and profit-oriented crime syndicates.

The issue of MDMA has suffered from a persistent pattern of media misinformation. In fact, MDMA's potential for physical and psychological addiction is low. Relevant to the Sentencing Commission's inquiries, MDMA is more equivalent to mescaline in its behavioral and pharmacological effects than it is to heroin. Although there are a small proportion of users who have developed excessive use patterns, they were likely highly vulnerable individuals to begin with who under different circumstances would develop severe problems with other drugs and behaviors. We recognize and deplore the degree to which MDMA abuse does occur, and we readily acknowledge that there are other potentially dangerous adverse effects, particularly when the drug is used under high-risk conditions. However, this proposed change in sentencing will not remedy the situation. Indeed, we predict that the numbers of

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2/5/2001

adverse events as well as fatalities will only increase subsequent to the enactment of the proposed change in sentencing law. Education and harm-reduction programs along with treatment on demand for problematic MDMA users will ultimately serve as far more effective and humane solutions for these problems.

To date, little public attention has been directed to MDMA's potential as a therapeutic medicine. It is our strong contention that MDMA's current placement as a Schedule 1 drug is highly inappropriate. Indeed, in 1986 the DEA's own administrative law judge recommended that the drug be placed in Schedule 3, which is for drugs with putative medical application. Entirely on political grounds, the DEA Director authorized that his own administrative law judge's recommendation be disregarded, and summarily placed MDMA in Schedule 1. It has remained there since, its legal status effectively preventing any approved clinical research from occurring. Well-controlled psychiatric research investigations on MDMA's potential safety and efficacy as an alternative treatment for conditions known to be refractory or non-responsive to conventional treatments, including individuals with end-stage cancer who have severe psychological distress and existential alienation and also for patients with chronic persistent post-traumatic stress disorder, need to be approved and funded.

Great alarm has been expressed about MDMA and its effect on the human brain. Unfortunately, debate has been stifled by the intrusion of a political agenda into the funding and reporting of neuroscience. Pivotal studies attesting to MDMA's "neurotoxic" nature have suffered from a pattern of serious flaws in methodology and problems in data interpretation. To an unfortunate degree, how studies were actually conducted was not honestly represented in formal publication. Ultimately, such practices not only erode scientific credibility, but also obfuscate our understanding of the true range of effects of MDMA.

One unintended result from the proposed sentencing changes will be the psychological, spiritual and material injury inflicted on the families of young people arrested for MDMA crimes. Most victims of these new sentencing guidelines will be young men and women, who will be caught providing friends and acquaintances with the drug. For the vast majority, these will have been activities of low entrepreneurial value.

For the reasons discussed above, we are concerned that the proposal to increase the MDMA sentencing laws will not only fail to reduce criminal activity, but will also lead to compounded degrees of injury to individuals, families and society. There are far more effective and responsible strategies available.

A complete list of our publications on MDMA in the medical literature is appended below.

We are happy to provide any further information or consultation if you so desire.

Sincerely,

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REFERENCES:

Bravo, GL (in press) The subjective effects of MDMA. In Holland, J (Ed.) Ecstasy: The Complete Guide. A Comprehensive Review of the Risks and Benefits of MDMA.

Chang, L; Ernst, T; Grob, CS & Poland, RE (1996) Neurochemical effects in 3,4-methylenedioxymethamphetamine (MDMA) users. Proceedings of the International Society for Magnetic Resonance in Medicine 4: 414.

Chang, L; Grob, CS; Ernst, T; Itti, L; Mishkin, FS; Jose-Melchor, R & Poland, RE (2000) Effect of ecstasy (3, 4-methylenedioxymethamphetamine) on cerebral blood flow: A co-registered SPECT and MRI study. Psychiatry Research 98: 15-28.

Grob, CS (2000) Deconstructing ecstasy: The politics of MDMA research. Addiction Research 8: 549-588.

Grob, CS (1998) MDMA research: preliminary investigations with human subjects. International journal of Drug Policy 9:119-124.

Grob, CS; Bravo, GL & Walsh, RN (1990) Second thoughts on 3,4-methylenedioxymethamphetamine (MDMA) neurotoxicity. Archives of General Psychiatry 47: 288.

Grob, CS; Bravo, GL; Walsh, RN & Liester, MB (1992) The MDMA- neurotoxicity controversy: implications for clinical research with novel psychoactive

drugs. *Journal of Nervous and Mental Disease* 180: 355-356.

Grob, CS & Poland, RE (1997) MDMA. In Lowinson, JH; Ruiz, P; Millman, RB & Langrod, JG (Eds.) *Substance Abuse: A Comprehensive Textbook*, Third Edition. Baltimore: Williams and Wilkins, pp. 269-275.

Grob, CS; Poland, RE; Chang, L & Ernst, T (1996) Psychobiologic effects of 3,4- methylenedioxymethamphetamine in humans: methodological considerations and preliminary observations. *Behavioural Brain Research* 73:103-107.

Liester, MB; Grob, CS; Bravo, GL & Walsh, RN (1992) Phenomenology and sequelae of 3,4- methylenedioxymethamphetamine use. *Journal of Nervous and Mental Disease* 180:345-352.